



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

B2



File: [Redacted] Office: Texas Service Center Date: NOV 29 2000

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

Public Copy

IN BEHALF OF PETITIONER: Self-represented

Identifying data removed to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

NOV 29 2000 0:10:22

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show sustained national or international acclaim at the very top level.

At the time of filing, the petitioner sought employment as a postdoctoral researcher at the University of Southern Mississippi's Institute of Marine Sciences. A postdoctoral position is, by nature, essentially a form of temporary advanced training rather than a career position; the petitioner received his Ph.D. in May 1999, only two months before he filed this petition. The petitioner must establish that he has already attained the highest level of acclaim and recognition in his field.

The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The petitioner documents his membership in the American Geophysical Union, the Society for Industrial and Applied Mathematics, and claims membership in the Oceanography Society although the record contains no proof of this last membership. The petitioner has not submitted any documentation from these groups to establish their membership requirements. If membership is open to any dues-paying professional in the field, then these memberships do not satisfy the wording of the regulation.

*Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The petitioner submits articles from the journals Backscatter and Oceanography concerning the use of high frequency radar in mapping and measuring oceanic features. These articles relate to the petitioner's area of research, but they make no mention of the petitioner at all. Thus, these articles neither reflect nor contribute to the petitioner's recognition in the field. The existence of articles discussing a field in which the petitioner happens to work does nothing to place the petitioner at the top of that field.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

[REDACTED] Ph.D., an oceanographer at the Ocean Dynamics and Prediction Branch of the Naval Research Laboratory at Stennis Space Center, states:

The research [the petitioner] has been pursuing, developing data assimilation ocean models, is extremely important to this country for monitoring the coastal environment, making better use of marine natural resources, and improving the ocean and

weather forecasting. . . . [C]onventional numerical ocean models . . . are not, and never will be perfectly accurate representations of the ocean's motions. To enhance the realism of the simulated results, a new-generation technique was introduced called data assimilation that integrates the measured data into numerical models continuously. . . .

[The petitioner] has developed an advanced data assimilation scheme that integrates surface ocean current data into a cohesive picture of the coastal environment via a nested, high-resolution numerical model. [The petitioner's] data assimilation scheme is innovative and has been proven to be the most accurate and versatile at the present time for simulating the ocean's motions of the coastal regions. His scheme is being utilized in the "An Innovative Coastal-Ocean Observing Network" (ICON) project on which [the petitioner] is currently working. . . .

[The petitioner's] data assimilation scheme is a multivariate method rather than the other univariate methods reported so far. . . . As a result, his data assimilation scheme is the only method that can use different kinds of field observations including surface currents derived from HF radar which are two-dimensional vector fields.

While [redacted] letter is the most detailed, the petitioner also submits letters from five other witnesses.

[redacted] Ph.D., of North Carolina State University, was one of the petitioner's Ph.D. thesis advisors. [redacted] of the University of Maryland Center for Environmental Science has collaborated "for many years" with another of the petitioner's Ph.D. thesis advisors. [redacted] associate professor at the Naval Postgraduate School, states that he has "worked directly with [the petitioner] . . . over the past six months." [redacted] is a principal investigator for the ICON project. [redacted], project manager for the National Data Buoy Center at the National Oceanic and Atmospheric Administration, is [redacted] an adjunct professor at the University of Southern Mississippi where the petitioner seeks employment as a postdoctoral research associate.

The above individuals generally discuss the petitioner's work in terms of the petitioner's eligibility for a national interest waiver. This waiver applies to a different visa classification, set forth in section 203(b)(2) of the Act.<sup>1</sup> An individual's work

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<sup>1</sup>The petitioner has, in fact, since received such a waiver; the petitioner filed another petition (receipt number SRC 00 078 50942) seeking the waiver on January 18, 2000. This petition has been approved, and the petitioner filed an application for adjustment of status which, at this writing, is still pending. Because the two

can serve the national interest without earning that individual sustained acclaim at the national or international level. There is no indication that the petitioner has won major recognition among scientists who have not collaborated with him or his superiors.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner has co-written a small number of articles published throughout the 1990s. The petitioner submits copies of other articles which appear to be in manuscript form; there is no evidence that these articles have been published.

The petitioner has not established that his published works exceed (in quantity or, more importantly, in impact) those of countless others in the field. Noted historian of science [REDACTED] has indicated in his book Why People Believe Weird Things (New York: W.H. Freeman and Company, 1997) that "[t]here are now . . . more than six million articles published in well over 100,000 scientific journals each year" (p. 24). It is plainly absurd to suggest that every one of those six million articles serves as *prima facie* evidence of national or international acclaim for each co-author (for many such articles are co-written) of each of those articles. The statutory intent, that the alien be shown to enjoy sustained national or international acclaim, is better satisfied by evidence that demonstrates the alien has consistently published work in prestigious, major journals (the word "major" appears repeatedly in the wording of the criterion). To hold otherwise would hypothetically allow an alien to satisfy this criterion simply by publishing his or her own journal.

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

The petitioner claims that his conference presentations satisfy this criterion, but scientific conferences are not artistic exhibitions or showcases. These presentations are more akin to scholarly publications, addressed in a separate criterion, above.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

[REDACTED] states that the petitioner "played a critical and vital role on several important research projects which were sponsored by [the] U.S. National Science Foundation," and that the petitioner is a "key researcher on the ICON project." The ICON project, however,

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petitions seek different classifications, the dismissal of the present appeal should have no effect on the outcome of the petitioner's essentially unrelated adjustment application.

is not clearly an organization or an establishment, but rather an ad hoc gathering of researchers from various institutions. No ranking official of the National Science Foundation has attested that the petitioner plays a critical role for the foundation as a whole. As noted above, the petitioner was a student until a matter of weeks before he filed this petition, and a temporary postdoctoral position is not a leading or critical position for a university.

The director instructed the petitioner to submit evidence to show how the petitioner stands above others in his field. In response, the petitioner claims to have satisfied two further criteria:

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner states:

There is an annual contest held in National Taiwan Ocean University, which consists of a written examination, laboratory and field research, computer programming, and academic reports. Usually, there are 9 categories, 11 awards and hundreds of participants. I took first place honor in the category of Marine Science in 1987. In the following year, I took second place award out of 23 people in the second round. Besides, North Carolina State University has offered me full-year scholarships and I have also been awarded an out-of-state tuition waiver.

All of the awards cited are student-level awards, and college study is not a field of endeavor. Furthermore, the "annual contest [at] National Taiwan Ocean University" appears to be open only to students at that one university, and thus the award is not national or international. The petitioner's tuition waiver and scholarships are likewise connected to a single school rather than to any national or international prize-giving body.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The petitioner observes that he has "been asked by editors of notable scientific journals to review and comment on articles submitted for publication," including an article submitted to the Journal of Physical Oceanography. The requests to which the petitioner refers are all dated after July 19, 1999, the petition's filing date. In Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. The petitioner in this

matter cannot retroactively establish eligibility using evidence which did not exist as of the filing date.

The director denied the petition, stating that the petitioner "is a qualified researcher" who, nevertheless, has not demonstrated the necessary sustained national or international acclaim.

On appeal, the petitioner discusses previously submitted evidence and argues that he has already satisfied five of the ten regulatory criteria for sustained national or international acclaim. We have already addressed this evidence, and need not revisit that discussion. The petitioner has shown that he is a prolific researcher who has won the respect of his peers and collaborators, but the record does not demonstrate that the petitioner is among the best-known figures in his field, nationally or internationally.

As noted above, the petitioner filed a new visa petition within days of filing the instant appeal. That second petition has been approved, and any adjustment proceedings arising from that approval are unaffected by the dismissal of the appeal at hand.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself in his field to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner is productive and talented, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.